

Letter of Appeal
Schools and Libraries Division
December 2, 2003
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technology, and evaluation of district needs regarding upgrades. RCOE relied on the values that were provided by Spectrum and agreed to by the school districts with respect to both the trade-in value and the scope and cost of each district's technology installation.

In or around October 2001, USAC engaged Arthur Andersen to conduct an audit of the RCOE application. The audit was undertaken with the assistance of RCOE, the school districts and Spectrum. As a result of the audit, Arthur Andersen questioned the trade-in value placed on the used equipment. Spectrum then commissioned an independent appraisal of the trade-in equipment. Based on the Arthur Andersen audit and using July 1, 1999 appraisal values from the Spectrum appraisal report, on or about October 3, 2003 USAC sent both RCOE and Spectrum a letter requesting "Recovery of Erroneously Disbursed Funds" to both parties for the amount of \$707,521.34.

The October 3, 2003 letter from the SLD alleges that the Universal Service Funding provided to the 16 districts listed above was "erroneously disbursed" and provides the following explanation to each district:

"Disbursed Funds Recovery Explanation: After a detailed review of documentation pertaining to this funding request the SLD has found that a recovery of erroneously disbursed funds in the amount of [dollar amount differs for each district] is required. A beneficiary audit discovered that the service provider accepted trade-in for the non-discounted share of services provided. This is permitted under the rules of the Schools and Libraries Division Support Mechanism, as the original equipment was not purchased with Universal Service Funds. The valuation of the trade-in equipment must be based on the fair market value of the equipment. Furthermore, the valuation date should be the date that service provider took possession of the equipment, but not earlier than the beginning of the funding year. The service provider has provided an independent appraisal of the trade-in equipment. Using the July 1, 1999 value indicated in that appraisal, it was determined that the trade-in value was only [dollar amount differs for each district], which is [dollar amount differs for each district] less than the non-discounted share of [dollar amount differs for each district] that the applicant was obligated to pay. Since the applicant did not cover [dollar amount differs for each district] of their portion of the charges, the corresponding portion of these charges paid by SLD must be recovered. At the 67 percent rate of this request, that translates to [dollar amount differs for each district]. As a result this amount of [dollar amount differs for each district] determined to have been erroneously disbursed and must now be recovered."

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RCOE is informed and believes that Spectrum intends to appeal the SLD's decision on the ground that all trade-in equipment should be valued on or around March 1, 1999. As discussed below, RCOE has no obligation to refund any of the funds received by Spectrum in connection with the E-rate Year 2 funding at issue. However, to the extent that USAC seeks to recover any moneys from RCOE, any amount sought should be adjusted based on the extent that Spectrum is successful in establishing a higher trade-in value than that reflected in the SLD decision.

Grounds for Appeal

1. Spectrum Is Responsible for the Repayment of Any Funds Found to Be Erroneously Disbursed

In FCC Order No. 99-291,⁵ the FCC directed USAC to adjust funding commitments made to schools and libraries where disbursement of funds associated with those commitments would result in violations of a federal statute. The FCC stated that it would seek payment from service providers rather than schools and libraries because, unlike schools and libraries that receive discounted services, service providers actually receive disbursements of funds from the universal service support mechanism. (FCC Order No. 99-291, ¶ 8.)

In the instant action, although the SLD has not claimed that the allegedly erroneous disbursement of funds is a violation of a federal statute, the principles articulated in FCC Order No. 99-291 should apply. As an experienced technology service provider, Spectrum assisted the districts in determining what technology was required, provided pricing for that technology as a CMAS vendor, and provided what it represented to be the fair market value of all trade-in equipment.⁶ The districts relied on Spectrum's superior knowledge and representations as to the value of the trade-in equipment when they made their ultimate decisions as to what new equipment to purchase and when they determined the additional funding, if any, that was necessary to secure that equipment. Similarly, RCOE relied on the information provided by Spectrum in preparing the application on behalf of the school districts and representing that the school districts had secured access to all resources necessary to pay the discounted charges for eligible services.

To the extent that SLD establishes that the trade-in values were overstated, Spectrum was the party with superior knowledge as to the appropriate fair market value for the equipment. Further, based on Spectrum's assertion of experience and expertise as an E-rate funding service provider, RCOE and the districts relied on Spectrum to have knowledge of the appropriate trade-in valuation

⁵ A true and correct copy of FCC Order No. 99-291 is attached hereto as Exhibit "B."

⁶ As between Spectrum and the school districts, RCOE asserts that Spectrum is contractually bound by the trade in value the parties agreed upon and may not recover additional funds from the districts.

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date for purposes of E-rate exchanges. Finally, Spectrum was the party that received the allegedly excess amounts. It is necessary and appropriate that, if funds are to be recovered by USAC, SLD, the party making the overstatement of trade-in value and receiving the allegedly excess funds should be obligated to repay those funds. Thus, the rationale stated in FCC Order No. 99-291 should apply and USAC should recover any funds found due and owing from Spectrum.

2. Perris Unified School District and San Jacinto Unified School District Did Not Participate in E-rate Year 2

Perris Union High School District ("Perris Union HSD") and San Jacinto Unified School District ("San Jacinto USD") were both included in the RCOE FCC Form 471 consortium application⁷, however these two districts chose not to participate after the RCOE application had been filed and approved.⁸ RCOE is informed that Perris Union HSD and San Jacinto USD did not receive any new equipment, and did not trade-in any equipment to Spectrum. However, it appears that Spectrum submitted invoices to SLD on behalf of these districts because both districts are included in the SLD request for recovery of erroneously disbursed funds. To the extent that Spectrum cannot document that it actually provided the equipment to Perris Union HSD or San Jacinto USD, SLD should direct any request for recovery concerning these two districts to Spectrum.

3. Palm Springs Unified School District Did Not Utilize All of the Funding it Requested

Palm Springs Unified School District ("Palm Springs USD") also was included in the RCOE FCC Form 471 consortium application⁹, but it did not utilize all of the funding it requested in the application. RCOE is informed that Spectrum submitted invoices to SLD on behalf of Palm Spring USD for the full amount requested. To the extent that Spectrum cannot document that it actually provided the full amount of equipment to Palm Springs USD, RCOE concurs that SLD should direct any request for recovery of the excess claimed concerning that district to Spectrum.

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⁷ For identification purposes, Perris Union HSD's Funding Request Number is 299377 (approved and funded for \$86,746) and San Jacinto USD's Funding Request Number is 299359 (approved and funded for \$75,728).

⁸ RCOE provided this information to Arthur Anderson when it audited the RCOE consortium application.

⁹ For identification purposes, Palm Spring USD's Funding Request Number is 299355 (approved and funded for \$173,492.15.)

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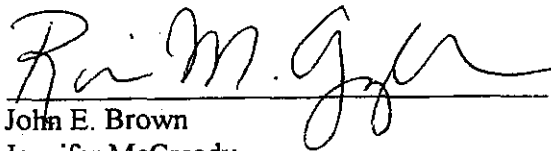
Conclusion

Based on the foregoing, RCOE respectfully requests that the SLD reconsider or clarify its decision and expressly confirm that it is not seeking recovery of some or all of the allegedly erroneously disbursed funds from RCOE or the school districts.

If your office has any questions regarding this matter, please do not hesitate to contact our office at (909) 686-1450 or via e-mail at <JEBrown@bbklaw.com>. Thank you for your consideration in this matter.

DATED: December 2, 2003

By:



John E. Brown

Jennifer McCready

Rina M. Gonzales

Attorneys for Riverside County Office of Education

RCOE EXHIBIT I



Federal Communications Commission
Washington, D.C. 20554

ORIGINAL

Memo

To: Rina M. Gonzales, Attorney for
Riverside County Office of Education

From: Narda M. Jones, Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

Date: February 28, 2005

Re: DA 05-498, Released February 25, 2005

Please find accompanying this memo the Commission's decision on your Request for Review. The accompanying decision may be referenced in the future by its Proceeding Number and release date: DA 05-498, February 25, 2005.

If you are not satisfied with this decision, you may file a petition for reconsideration with the Commission within 30 days of the release date of the decision.¹ However, the petition will generally be granted only if it demonstrates an error in the decision based upon (1) facts which relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters; or (2) facts unknown to petitioner until after the Request for Review was filed and which could not, through the exercise of ordinary diligence, have been learned prior to that time.² Petitions for reconsideration are decided by the Wireline Competition Bureau of the Commission.

You may also file an application for review with the Commission if you are displeased with this decision. Your application for review must be filed within 60 days of the release date of the decision pursuant to section 1.115(c) of our rules. Please note that the application for review will not be granted if it relies on questions of fact or law upon which the designated

¹ See 47 C.F.R. § 1.106(f).

² See 47 C.F.R. § 1.106(b)(2).

authority has been afforded no opportunity to pass.³ Applications for review are decided by the full Commission.

Petitions for reconsideration and applications⁴ for review should be submitted to the Secretary, Federal Communications Commission, Washington, D.C., 20554, they should reference CC Docket No. 02-6 as well as the Proceeding Number of the decision from which relief is sought, and should otherwise conform to the requirements the Commission's rules.⁴

If you have any questions regarding the foregoing, feel free to contact the Telecommunications Access Policy Division at (202) 418-7400.

³ See *Implementation of Interim Filing Procedures for Filings of Requests for Review*, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Order, FCC-376, 17 FCC Rcd 339 (2002). See 47 U.S.C. § 1.115(c).

⁴ See 47 C.F.R. § 1.106, 1.115.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
Requests for Review of the Decision of the)	
Universal Service Administrator)	
ATEK Construction, Inc. – Los Angeles Unified	)	File No. SLD-153005
School District)	
Los Angeles, California)	
Riverside County Office of Education	)	File No. SLD-148309
Riverside, California)	
SBC-Illinois and Ameritech Advanced Data	)	File No. SLD-190697
Services, Inc. – Harvey Public School District)	
Harvey, Illinois)	
Southwestern Bell Telephone Company –	)	File No. SLD-202704
Education Service Center-Region 1)	
Edinburg, Texas)	
Spectrum Communications Cabling Services, Inc.	)	File No. SLD-148309
– Riverside County Office of Education)	
Riverside, California)	
Verizon New Jersey, Inc. – Dar Al-Hikmah	)	File No. SLD-310459
Elementary School)	
Prospect Park, New Jersey)	
Schools and Libraries Universal Support	)	CC Docket No. 02-6
Mechanism)	

ORDER

Adopted: February 23, 2005

Released: February 25, 2005

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration the above-captioned Requests for Review of commitment adjustment decisions issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC).¹ For the reasons set forth

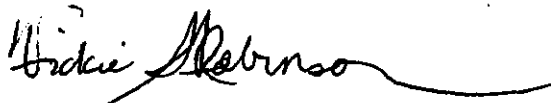
¹Letter from Ali Taba, ATEK Construction, Inc., to Federal Communications Commission, filed July 12, 2004; Letter from Rina M. Gonzales, Riverside County of Education, to Federal Communications Commission, filed October 1, 2004; Letter from Christopher M. Heimann, SBC-Illinois and Ameritech Advanced Data Services, Inc. to Federal Communications Commission, filed on July 9, 2004; Letter from Christopher M. Heimann, Southwestern Bell Telephone Company – Education Service Center – Region 1, to Federal Communications Commission, filed on July 13, 2004; Letter from Pierre Pendergrass, Spectrum Communications Cabling Services, Inc., to Federal Communications Commission, filed on August 30, 2004; Letter from Ann H. Rakestraw, Verizon New Jersey, Inc., to Federal Communications Commission, filed May 14, 2004 (collectively, Requests for Review).

below, we grant the Requests for Review and remand them to USAC for further consideration.

2. Consistent with the requirements of the *Commitment Adjustment Order* and the *Commitment Adjustment Implementation Order*, USAC has generally pursued recovery for both statutory and rule violations from service providers.² In the *Schools and Libraries Fourth Report and Order*, however, the Commission determined that recovery of schools and libraries funds disbursed in violation of the statute or a rule should be directed to the party or parties responsible for the statutory or rule violation, including a school or library.³ The Commission directed USAC to implement this policy on a going forward basis to all matters for which USAC has not yet issued a demand letter as of the effective date of the order and to all recovery actions currently under appeal to either USAC or the Commission.⁴ Each Request for Review raises the argument that another party, particularly the school or library receiving discounted services or another service provider, committed the statutory or rule violation for which SLD is seeking recovery of funds.⁵ Because USAC did not consider which party was responsible for the statutory or rule violation at issue, we find it appropriate to remand the above-captioned Requests for Review of commitment adjustment decisions to USAC for further consideration consistent with the Commission's decision in the *Schools and Libraries Fourth Report and Order*.

3. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the requests for review filed by ATEK Construction, Inc. – Los Angeles Unified School District, Los Angeles, California, on July 12, 2004; Riverside County Office of Education, Riverside, California, on October 1, 2004; SBC-Illinois and Ameritech Advanced Data Services, Inc. – Harvey Public School District, Harvey, Illinois, on July 9, 2004; Southwestern Bell Telephone Company – Education Service Center-Region 1, Edinburg, Texas, on July 13, 2004; Spectrum Communications Cabling Services, Inc. – Riverside County Office of Education, Riverside, California on August 30, 2004; and Verizon New Jersey, Inc. – Dar Al-Hikmah Elementary School, Prospect Park, New Jersey, on May 5, 2004, ARE GRANTED, and these appeals ARE REMANDED to USAC for further action consistent with this Order.

FEDERAL COMMUNICATIONS COMMISSION



Vickie S. Robinson
Deputy Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

² *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 97-21 and 96-45, Order, FCC 99-291 (rel. Oct. 8, 1999) (*Commitment Adjustment Order*); *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, 15 FCC Rcd 22975 (2000) (*Commitment Adjustment Implementation Order*).

³ *Federal State Joint Board on Universal Service, Changes to the Board of Directors for the National Exchange Carrier Association, Inc., Schools and Libraries Universal Support Mechanism*, Order on Reconsideration and Fourth Report and Order, 19 FCC Rcd 15252 (2004) (*Schools and Libraries Fourth Report and Order*).

⁴ *Id.* at 15256, para. 10.

⁵ *Id.*

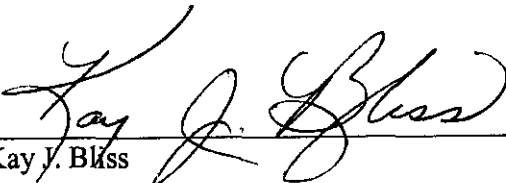
CERTIFICATE OF SERVICE

I, Kay J. Bliss, certify that on this 26th day of April, 2005, a copy of the foregoing Application for Review has been served via first class mail, postage pre-paid, to the following:

Spectrum Communications Cabling Systems, Inc.
Attn: Pierre Pendergrass, Esq.
26 North Lincoln Ave
Corona, CA 92882

I further certify that the Application for Review was filed with the FCC by e-mail as follows:

Federal Communications Commission
Washington, D.C. 20554
Via E-Mail: CCBSecretary@fcc.gov


Kay J. Bliss

Denise Berger

From: Rina M. Gonzales [Rina.Gonzales@bbklaw.com]

Sent: Wednesday, April 27, 2005 2:22 PM

To: CCBSecretary

Subject: Application for Review filing re File No. SLD-148309, CC Docket No. 02-6 (Email 1 of 4)

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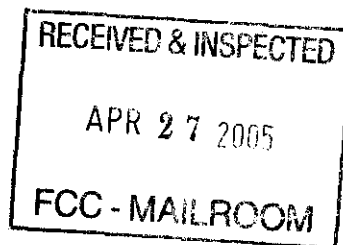
To Whom It May Concern:

Please find attached Riverside County Office of Education's Application for Review regarding File No. SLD-148309, CC Docket No. 02-6 (Email 1 of 4).

If you have any questions, please contact me directly at (951) 961-0335.

Rina M. Gonzales, Esq.
Best Best & Krieger LLP

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4/28/2005

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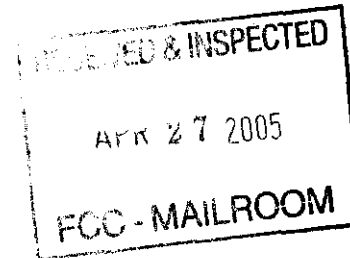
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ORANGE COUNTY
(949) 263-2600

SACRAMENTO
(916) 325-4000

RINA M. GONZALES
(951) 826-8332
RINA.GONZALES@BBKLAW.COM

April 27, 2005



VIA E-MAIL: CCBSECRETARY@FCC.GOV

Federal Communications Commission
Washington, D.C. 20554

Re: Application for Review filing re File No. SLD-148309, CC Docket No. 02-6

To Whom It May Concern:

The law firm of Best, Best & Krieger LLP represents the Riverside County Office of Education ("RCOE") in this matter and is filing this Application for Review on its behalf.

Last night, our office attempted to file this Application for Review via e-mail pursuant to *Implementation of Interim Filing Procedures for Filings of Requests for Review*, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Order, FCC 01-376, 17 FCC Rcd 339 (2002). This Order provides that the FCC will accept e-mail filings for applications for review but does not include a maximum size for the document.

We e-mailed three (3) Adobe Portable Document Format (PDF) attachments which comprise the entire Application for Review. Typically, our email server tells us immediately if an e-mail is undeliverable. My assistant waited for approximately 15 minutes to ensure that no such messages were received before leaving the office. As such, we were comfortable that the e-mail delivery was successful.

This morning, my assistant relayed to me that our e-mail to <CCBSecretary@fcc.gov> was returned one hour after it was sent as undeliverable because the recipient's mailbox was full, and that the message exceeded a maximum fixed size. We have attached a true and correct copy of this e-mail.

Federal Communications Commission
April 27, 2005
Page 2

I have spoken this morning with Bill Caton at the FCC Secretary's office who advised that we provide the above-described background to indicate the unforeseeable circumstances which have arisen with respect to this e-mail filing, he also suggested we request that the FCC deem RCOE's application as timely filed. We now intend to split the attachments so that they can be accepted by the Secretary's mailbox, and respectfully request that the FCC accept our Application and supporting Exhibits. If I can provide any additional information, I can be reached directly at (951) 826-8332.

Sincerely,

A handwritten signature in black ink, appearing to read "R-M. Gonzales", with a long horizontal flourish extending to the right.

Rina M. Gonzales
for BEST BEST & KRIEGER LLP

RMG:rmg

Attachments:

- 1) Email re Undeliverable: Request for Review of Decision of Universal Service Administrator by Riverside County of Education – File SLD-148309, CC Docket No. 02-6
- 2) Application for Review (in separate e-mail attachments)

Key Blies

From: System Administrator
To: CCBSecretary@fcc.gov
Sent: Tuesday, April 26, 2005 7:18 PM
Subject: Undeliverable: Request for Review of Decision of Universal Service Administrator by Riverside County of Education - File SLD-148309, CC Docket No. 02-6

Your message did not reach some or all of the intended recipients.

Subject: Request for Review of Decision of Universal Service Administrator by Riverside County of Education - File SLD-148309, CC Docket No. 02-6
Sent: 4/26/2005 6:15 PM

The following recipient(s) could not be reached:

CCBSecretary@fcc.gov on 4/26/2005 8:18 PM
The message could not be delivered because the recipient's mailbox is full.
< ns1.riv.bbklaw.com #5.2.2 SMTP; 552 5.2.3 Message exceeds maximum fixed size (10240000)>

Kay Bliss

From: Kay Bliss
Sent: Tuesday, April 26, 2005 6:15 PM
To: CCBSecretary@fcc.gov
Subject: Request for Review of Decision of Universal Service Administrator by Riverside County of Education - File SLD-148309, CC Docket No. 02-6



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Federal Communications Commission

Washington, D.C. 20554
Via E-Mail: CCBSecretary@fcc.gov

To Whom It May Concern:

Please find attached Riverside County Office of Education's Application for Review regarding File No. SLD-14309, FCC Order DA 05-498 (CC Docket 02-6). There are 3 pdf documents in total which comprise this Application for Review. Please contact Rina Gonzales (rina.gonzales@bbklaw.com) or me immediately if you have any questions or comments.

Kay Bliss
Assistant to Rina M. Gonzales, Esq.

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<<Scanjob_20050426_180410.PDF>>

Denise Berger

From: Rina M. Gonzales [Rina.Gonzales@bbklaw.com]

Sent: Wednesday, April 27, 2005 3:19 PM

To: CCBSecretary

Subject: Application for Review filing re File No. SLD-148309, CC Docket No. 02-6 (Email 4a(2) of 4)

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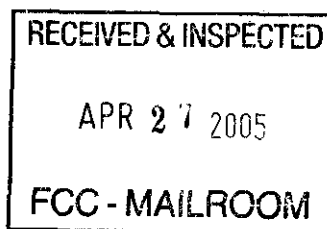
To Whom It May Concern:

Please find attached Riverside County Office of Education's Application for Review regarding File No. SLD-148309, CC Docket No. 02-6 (Email 4a(2) of 4).

If you have any questions, please contact me directly at (951) 961-0335.

Rina M. Gonzales, Esq.
Best Best & Krieger LLP

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4/28/2005

RECEIVED & INSPECTED

APR 27 2005

FCC - MAILROOM

Exhibit 1



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal - Funding Year 1999-2000

July 1, 2004

Pierre F. Pendergrass
Spectrum Communications Cabling Services, Inc.
226 North Lincoln Avenue
Corona, CA 92882

RECEIVED & INSPECTED

APR 27 2005

FCC - MAILROOM

Re: R O P Riverside County

Re: Billed Entity Number: 143743
471 Application Number: 148309
Funding Request Number(s): 299355, 299356, 299359, 299361, 299363,
299365, 299367, 299368, 299370, 299371,
299372, 299373, 299376, 299377, 299378,
299379, 299381, 299382

Your Correspondence Dated: December 2, 2003

After thorough review and investigation of all relevant facts, the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") has made its decision concerning your appeal of SLD's Funding Year 1999 Recovery of Erroneously Disbursed Funds (REDF) Decision for the application number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day period for appealing this decision to the Federal Communications Commission ("FCC"). If your letter of appeal included more than one application number, please note that for each application an appeal is submitted, a separate letter is sent.

Funding Request Number(s): 299355, 299356, 299359, 299361, 299363,
299365, 299367, 299368, 299370, 299371,
299372, 299373, 299376, 299377, 299378,
299379, 299381, 299382

Decision on Appeal: Denied in Full
Explanation:

- You have stated on appeal that the SLD determined that the appropriate valuation date for trade-in equipment is the date the service provider took possession of the equipment but no earlier than the beginning of the funding year, in this case July 1, 1999. You also state that the SLD has relied upon an independent appraisal that Spectrum provided in order to determine the value of the equipment on July 1, 1999. You feel that the SLD

determination in this matter is misguided and SLD should cease its attempt to recover funds disbursed. You close by stating that it is inherently unfair to seek recovery from Spectrum for an incorrect determination of the valuation date because no program rule of FCC guidance on this issue existed at the time the transaction occurred. In fact, the SLD neither announced a rule nor sought guidance from the FCC on this issue until the first quarter of 2003, four years after the transaction. You add that although the independent appraisal Spectrum provided did value the equipment in the amounts indicated in the REDF Letter, this appraisal is not more authoritative than Spectrum's opinion because Spectrum had first hand knowledge of the actual pieces of equipment in question. Further, the appraisal is less reliable than Spectrum's opinion at the time it received the equipment because the appraisal is based upon information that is almost four years old.

- Upon thorough review of the appeal letter and relevant documentation, we find that the facts support SLD's decision. An Internal Audit found that Spectrum Communications accepted a trade-in amount for the above funding requests. This is permitted under program rules because the original equipment was not purchased with program funds. After the Audit findings, the applicant argued that the calculation of the Fair Market Value (FMV) of the equipment should not be based on a 3-year straight-line depreciation schedule, and SLD accepted this presumption. However, the trade-in amount was based on the value of the equipment at the time of the contract, which was before the start of the funding year and several months before Spectrum was set to take possession of the equipment. Spectrum provided an independent appraisal indicating the FMV of the equipment as of July 1, 1999. SLD has accepted this appraisal and determined that the recovery amounts should be based on the date that Spectrum took possession of the equipment, but no earlier than the first day of the funding year. Although the agreement was executed in March 1999, you have indicated that the equipment was not transferred until after the start of Funding Year 1999. Therefore, it is appropriate for SLD to value the equipment as of July 1, 1999. In its role as program Administrator, USAC must ensure that there is no waste, fraud and abuse. Consequently, the appeal is denied.
- The FCC has directed USAC "to adjust funding commitments made to schools and libraries where disbursement of funds associated with those commitments would result in violations of a federal statute" and to pursue collection of any disbursements that were made in violation of a federal statute. *See In re Changes to the Board of Directors of the National Exchange Carrier Association*, CC Docket Nos. 97-21, 96-45, FCC 99-291 ¶ 7 (rel. October 8, 1999). The FCC stated that federal law requires the Commission to "seek repayment of erroneously disbursed funds" where the disbursements would violate a federal statute. *Id.* ¶¶ 7, 1. The FCC stated that repayment would be sought "from service providers rather than schools and libraries because, unlike schools and libraries that receive discounted services, service providers actually receive disbursements of funds from the universal service support mechanism." *Id.* ¶ 9.

If you believe there is a basis for further examination of your application, you may file an appeal with the Federal Communications Commission (FCC). You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the above date on this letter. Failure to meet this requirement will result in automatic dismissal of

your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience, and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

cc: Mr. Elliott Duchon
R O P Riverside County
3939 Thirteenth Street
Riverside, CA 92502

cc: Rina M. Gonzales
Best Best & Krieger LLP
3750 University Avenue
Post Office Box 1028
Riverside, CA 92502-1028

Exhibit 2



SPECTRUM COMMUNICATIONS
CABLING SERVICES, INC.

December 2, 2003

LETTER OF APPEAL

(Sent via email, facsimile and Federal Express)

Letter of Appeal
Schools and Libraries Division
Box 125 - Correspondence Union
80 South Jefferson Road
Whippany, NJ 07981

Re: Recovery of Erroneously Disbursed Funds
Funding Year 1999-2000
Form 471 Application Number: 148309
Applicant Name R O P - Riverside County

Dear Schools and Libraries Division:

Spectrum Communications ("Spectrum") submits this letter to appeal the SLD's Recovery Of Erroneously Disbursed Funds for the following Funding Request Numbers (the "FRNs" or, individually, "FRN"): 299376, 299377, 299378, 299379, 299381, 299382, 299355, 299356, 299359, 299361, 299363, 299365, 299367, 299368, 299370, 299371, 299372 and 299373.

The Disbursed Funds Recovery Letter is dated October 3, 2003. The named applicant is R O P Riverside County. The Form 471 Application Number is 148309. The Billed Entity Number is 143743.

Provided below is the contact information for the person authorized to discuss this appeal on behalf of Spectrum:

Pierre F. Pendergrass
General Counsel
Spectrum Communications
226 N. Lincoln Avenue
Corona, CA 92882
Tel.: 909-371-0549
Fax: 909-273-3114
Email: Pierre@Spectrumccsi.com

RCOE
Exhibit G
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I. PRELIMINARY STATEMENT

Spectrum, a privately held corporation founded in 1985, is a provider of information technology products and services. The company's customer base is primarily the education market, public sector agencies and large healthcare facilities. The company has participated in the E-Rate program since 1998. Since then, Spectrum has acted as a service provider for approximately 38 different school districts.

R O P - Riverside County, also known as the Riverside County Office of Education ("RCOE"), is a service agency supporting Riverside County's 23 school districts and linking them with the California Department of Education. RCOE provides, among other services, assistance to its member districts in the deployment and maintenance of network and telecommunications services. There are approximately 6.1 million students enrolled throughout Riverside County for the 2002-03 school year.

For E-Rate Funding Year 1999-2000, RCOE formed a consortium of its member school districts for the purpose of applying for E-Rate discounts. On March 5, 1999, RCOE filed a Form 470 (Number 220100000227898) soliciting proposals from prospective service providers for a range of E-Rate eligible products and services. After examining existing equipment which RCOE consortium members intended to trade-in to Spectrum for the purpose of providing its E-Rate matching funds, Spectrum determined the fair market value of the equipment to be \$1,813,505.83. Spectrum then submitted a bid proposal in response to the Form 470 and RCOE subsequently selected Spectrum as the service provider for the consortium. On April 5, 1999, RCOE filed a Form 471 (number 148309) evincing its acceptance of Spectrum's proposal and its selection of Spectrum as its service provider for Funding Year 1999-2000.

The total pre-discount value of the agreement between RCOE and Spectrum was \$5,495,472.20. RCOE was eligible for an E-Rate discount of sixty-seven percent (67%). Consequently, RCOE and/or its consortium members were required to provide matching funds at a rate of 33% or \$1,813,505.83 total. In or around March, 1999, when RCOE and Spectrum entered into the agreement for E-Rate services, the parties agreed that Spectrum would accept, in lieu of cash, the consortium equipment Spectrum had valued at \$1,813,505.83 as RCOE's payment for the non-discounted portion of the contract price.

The SLD now contests the value of the trade-in equipment RCOE provided as its matching component. More precisely, the SLD contends that the appropriate trade-in value of the equipment was its fair market value at the beginning of the funding year (July 1, 1999) and not its fair market value on the date RCOE and Spectrum entered into the agreement for services (March 1999). The SLD contends that the total fair market value of the consortium's equipment on July 1, 1999 was \$1,316,159. Consequently, the SLD seeks recovery in the amount of \$707,521.34.

II. THE DISBURSED FUNDS RECOVERY LETTER

The Disbursed Funds Recovery Letter, dated October 3, 2003, is a total of 22 pages. Pages 1 through 4 describe the process for filing an appeal and also provide a guide to the funding disbursement synopsis. Pages 5 through 22 each seek recovery for a specific FRN. For each of the 18 FRNs in question, the basis of recovery is the contention that on July 1, 1999, the fair market value of the trade-in equipment was less than the non-discounted share that the applicant was required to pay. Specifically, for each of the FRNs, the Disbursed Funds Recovery Letter states the following:

"The valuation of the trade-in equipment must be based on the fair market value of the equipment. Furthermore, the valuation date should be the date

the service provider took possession of the equipment, but not earlier than the beginning of the funding year."

Spectrum appeals the determination by the SLD that the valuation date should be the date the service provider took possession of the equipment, but no earlier than the beginning of the funding year.

Pages 5 through 22 of the Disbursed Funds Recovery Letter reach a determination of the value of the trade-in equipment on July 1, 1999 for each of the FRNs. Specifically, for each of the FRNs, pages 5 through 22 state the following:

"The service provider has provided an independent appraisal of the trade-in equipment. Using the July 1, 1999 value indicated in that appraisal, it was determined that the trade-in value was only (*amount varies by FRN*), which is (*amount varies by FRN*) less than the non-discounted share of (*amount varies by FRN*) that the applicant was obligated to pay."

Spectrum appeals the determination by the SLD that the actual fair market value of the equipment on July 1, 1999 was the value indicated in the independent appraisal.

III. ARGUMENT

The SLD has determined that the appropriate valuation date for trade-in equipment is the date the service provider took possession of the equipment but no earlier than the beginning of the funding year or, in this case, July 1, 1999. Further, the SLD has relied upon an independent appraisal Spectrum provided in order to determine the value of the equipment on July 1, 1999. These determinations are misguided and the SLD should cease its attempt to recover funds disbursed pursuant to the FRNs.

Firstly, any agreement that contemplates an equipment trade-in in lieu of cash must assign a value to the equipment at the time of contract formation - not at a later date. Otherwise, the applicant will not know its payment obligations under the agreement. Furthermore, for

Funding Year 1999-2000, the SLD required an applicant to enter an agreement and file a Form 471 by April 6, 1999. As a result, it was impossible for RCOE and Spectrum to value the equipment at the start of the funding year (July 1, 1999) and still comply with the SLD's requirement that the agreement be formed and the Form 471 be filed by April 6, 1999.

Secondly, it is inherently unfair to seek recovery from Spectrum for an incorrect determination of the valuation date because no program rule or FCC guidance on this issue existed at the time the transaction occurred. In fact, the SLD neither announced a rule nor sought guidance from the FCC on this issue until the first quarter of 2003 - four years after the transaction.

Thirdly, although the independent appraisal Spectrum provided did value the equipment in the amounts indicated in the Disbursed Funds Recovery Letter, this appraisal is not more authoritative than Spectrum's opinion because Spectrum had first-hand knowledge of the actual pieces of equipment in question. Further, the appraisal is less reliable than Spectrum's opinion at the time it received the equipment because the appraisal is based upon information that is almost four years old.

Lastly, if funds were, in fact, erroneously disbursed as a result of the use of an incorrect valuation date, the appropriate remedy is to require RCOE to pay Spectrum the corresponding non-discounted portion because this is what would have been required at the time of transaction had the parties known the correct valuation date. Alternatively, the SLD should seek full recovery from the applicant alone because recovery from Spectrum will result in RCOE having paid less than its required matching portion - a clear rule violation and an abuse of the E-Rate Discount Mechanism.

A. THE APPROPRIATE VALUATION DATE IS THE DATE THE PARTIES ENTERED INTO AN AGREEMENT FOR SERVICES - NOT THE DATE THE SERVICE PROVIDER TOOK POSSESSION OF THE EQUIPMENT OR, IN THIS CASE, JULY 1, 1999.

The E-Rate program rules require the service provider and the applicant to enter into an agreement before the Form 471 is filed. This agreement necessarily establishes the type and amount of consideration to be paid for the goods and services purchased. Consequently, any agreement that contemplates the trade-in of equipment in lieu of a cash payment must assign a value to the equipment at the time of contract formation - not at a later date. Otherwise, the parties will have no way of determining the actual price in the contract and the validity of the contract would be in doubt. For this reason alone, the appropriate valuation date could not be July 1, 1999 or, alternatively, the date Spectrum took possession of the equipment.

Furthermore, the SLD's Funding Year 1999-2000 requirement that the applicant enter an agreement with the service provider and file Form 471 by April 6, 1999 made it impossible for RCOE and Spectrum to value the equipment at the start of the funding year (July 1, 1999) and still comply with the requirement that the agreement be formed and the Form 471 be filed by April 6, 1999. The agreement between RCOE and Spectrum necessarily defined the type and amount of consideration RCOE was required to pay and, therefore, had to assign a value to the trade-in equipment. If the parties had waited until the start of the funding year (July 1) to value the equipment, RCOE would have missed the deadline for filing its Form 471.

After carefully considering the type, amount and condition of the equipment held by the RCOE consortium, Spectrum developed a proposal that would enable the consortium members to meet their technology plan objectives while, at the same time, avoid a cash outlay. RCOE reviewed this proposal and found it to be the most cost-effective response to its Form 470. However, before agreeing to hire Spectrum, RCOE and/or its consortium members were required

to obtain board approval of the proposed contract with Spectrum. It would have been impossible for RCOE and its member districts to have obtained board approval without first describing in detail the purchase price and the terms (including the amount of cash required) of the agreement. Consequently, the parties had to value the equipment at the time they reached an agreement.

B. IT IS UNFAIR TO SEEK RECOVERY FOR THIS MATTER BECAUSE NO RULE OR GUIDANCE REGARDING TRADE-IN VALUATIONS EXISTED EITHER AT THE TIME THE PARTIES ENTERED INTO THE AGREEMENT OR ON JULY 1, 1999.

It is inherently unfair to seek recovery from Spectrum for an incorrect determination of the valuation date because no program rule or FCC guidance on this issue existed at the time the transaction occurred. As evidenced by a March 3, 2003 email from Ed Falkowitz of the SLD to John Price, CFO of Spectrum, neither Spectrum nor the SLD learned of any guidance on this issue until *four* years after RCOE and Spectrum reached their agreement. At the time RCOE and Spectrum reached their agreement most of the rules or guidance surrounding trade-in equipment addressed the issues of the original source of funds for the equipment and its fair market value in general. Specifically, the rules required equipment to be traded in at its fair market value and prohibited a trade-in of equipment that was purchased with E-Rate funds. The rules were silent, however, on which date the fair market value should be assessed.

The guidance provided in the March 3, 2003 email from Ed Falkowitz announces a new policy of which neither RCOE, Spectrum, nor the SLD were aware. If the entity charged with administering the program and preventing waste, fraud and abuse did not anticipate the need for guidance on this issue when it contemplated allowing trade-ins, it is certainly unfair to expect the applicant and the service provider to have done so. Between the SLD, RCOE and Spectrum, the SLD should bear the risk of the consequences of a new policy since it has the exclusive responsibility of administering the program.

Moreover, it is unfair for a program participant, exercising good faith and complying with all applicable rules, to be penalized for acting reasonably under the circumstances.

However, Spectrum will be penalized for acting reasonably if this appeal is not granted. For the reasons discussed above, it would have been entirely unreasonable to assume the valuation date to be any date other than the date the parties reached an agreement. This is particularly true in the absence, as here, of an SLD rule or FCC guidance on which date is the appropriate for equipment valuations. Consequently, RCOE and Spectrum had no other recourse but to reasonably assume the equipment should be valued at the time the agreement is formed.

Lastly, USAC's role of preventing waste, fraud and abuse in the program is severely undermined if program participants are penalized for acting reasonably in the absence of a clear rule or guidance on an issue. USAC should encourage participants to act reasonably and in good faith whenever the rules are silent on a particular issue. To do otherwise is to encourage waste, fraud and abuse.

C. THE ACTUAL FAIR MARKET VALUE OF THE TRADE-IN EQUIPMENT ON JULY 1, 1999, WAS NOT THE AMOUNT INDICATED IN THE APPRAISAL, BUT RATHER THE AMOUNT SPECTRUM ACTUALLY DETERMINED IT TO BE.

The appraisal which values the equipment at \$1,316,159 as of July 1, 1999, is not more authoritative than Spectrum's opinion of the value. Unlike the appraiser who compiled the report, Spectrum (i) had actually sold and installed the specific pieces of equipment at issue, (ii) was knowledgeable about the manner in which the equipment had been used and maintained, (iii) was knowledgeable about the training and expertise of the staff who had been using the equipment, and (iv) most importantly, knowledgeable about the identity and needs of potential buyers of the specific pieces of equipment in question. As a result of this additional knowledge which the appraiser lacked, Spectrum's opinion on the value of the equipment at issue is

inherently more reliable than an appraiser's opinion formed four years after Spectrum's opinion. Each of the aforementioned facts within Spectrum's knowledge caused Spectrum to value the equipment more highly than a party without these facts might. For these reasons, USAC should defer to Spectrum's assessment of the equipment's value.

D. IF FUNDS WERE ERRONEOUSLY DISBURSED, THE APPROPRIATE REMEDY IS AN INCREASE IN THE NON-DISCOUNTED PORTION THE APPLICANT IS REQUIRED TO PAY OR, ALTERNATIVELY, FULL RECOVERY FROM THE APPLICANT OF THE ERRONEOUSLY DISBURSED AMOUNT.

If funds were, in fact, erroneously disbursed as a result of the use of an incorrect valuation date, the appropriate remedy is to require the applicant to pay Spectrum the corresponding non-discounted portion because this is what would have been required at the time of the transaction had the parties known the appropriate valuation date. Given the absence of bad faith by both RCOE and Spectrum, no purpose is served by imposing the harsh penalty of a full recovery against Spectrum. Instead, the SLD should seek to obtain the result that would have occurred had a clear rule defining the appropriate valuation date been in place at the time the parties reached their agreement. Therefore, the SLD should require RCOE to pay Spectrum matching funds that are appropriate for the amount of E-Rate funds actually disbursed.

Furthermore, Spectrum did not receive USAC's final determination of the amount that RCOE failed to pay for the non-discounted services until Spectrum received the Disbursed Funds Recovery Letter dated October 3, 2003. Spectrum has sent RCOE the attached invoice for the remaining matching funds. In the event USAC determines funds were erroneously disbursed, RCOE should immediately be given an opportunity to pay the invoice from Spectrum.

Alternatively, if USAC denies RCOE the opportunity to pay for the remaining non-discounted services, USAC should seek the entire recovery from RCOE because recovery from

Spectrum will result in RCOE having paid less than its required matching portion - a clear rule violation and an abuse of the E-Rate program. RCOE received all of the services for which it contracted. Consequently, it should pay the full contract price, less any E-Rate discounts to which it is actually entitled. If the SLD recovers disbursed funds from Spectrum, Spectrum will have provided all of the services it was obligated to provide, but Spectrum will receive only a portion of the price it legally and reasonably charged for those services. This unreasonable and unfair result will undermine the integrity of the program.

IV. CONCLUSION

Based on the foregoing, USAC should immediately reverse its determination that E-Rate funds were erroneously disbursed to RCOE for funding year 1999-2000.

Respectfully submitted,

SPECTRUM COMMUNICATIONS
CABLING SERVICES, INC. D/B/A/
SPECTRUM COMMUNICATIONS

By:


Pierre F. Pendergrass

Its: General Counsel

Date: December 2, 2003

Attachments (3)

SLD website announcement regarding deadline for Form 471 for funding year 1999-2000

Email from Ed Falkowitz dated March 17, 2003

Invoice from Spectrum to RCOE dated December 2, 2003

Graphics Off



The Universal Service Administrative Company

Home

High Cost

Low Income

Rural Health Care

State Health Programs

Home > [Announcement Archives](#) > February 1999 Announcements

About the SLD

Training

Process Flowchart

Timetable/Deadlines

Conference Calls

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Data Requests

Form 471 Application Status

Billed Entity Search

SPIN Search

FRN Extensions

Applicants PIN Request System

Apply Online

Applicant Forms

Provider Forms

February 1999 Announcements

Please click on the topic below to view the most recent announcements:

- **Wave 10 is the End! Final Wave of Funding Commitments Available** (2/27/1999)
- **New Search Function! Service Provider Information by SPIN** (2/24/1999)
- **Wave 9 Recipients of E-rate Funding** (2/20/1999)
- **Form 471 Minimum Processing Standards** (2/20/1999)
- **10 BEAR Form Tips** (2/12/1999)
- **Fact Sheet on Library Consortia** (2/10/1999)
- **New!! Type-In / Print-Out Your Form 486** (2/5/1999)
- **Application Window Extended to April 6, 1999** (2/3/1999)
- **Wave 7 Recipients of E-rate Funding** (2/3/1999)
- **More Waves to Come!** (2/3/1999)
- **What's New Archives...**

Wave 10 is the End! Final Wave of Funding Commitments Available [Top of Page](#) (2/27/1999)

The Schools and Libraries Division has issued its final wave of funding commitment decisions for the 1998 program year. This final wave means:

- Funding commitment decision letters will go to the 6% of in-the-window applicants who had not yet received a decision from us. Information about these funding commitments is now posted on this Web Site (www.sl.universalservice.org/reference/fndcommit.asp), and applicants should receive their letters during the following week.
- Letters will also go out to those applicants whose internal connections requests were deemed "as yet unfunded" until this wave. Approved internal connections requests at the 70% discount level and above will be funded; we will NOT have funds to accommodate internal connections requests at or below 69% discount.
- We now know definitively that we will NOT be able to consider for funding any applications received outside the 75-day window. These applicants will be notified

Apply Online

- [Reference Area](#)
- [Appeals](#)
- [Eligible Service List](#)
- [Changes & Corrections](#)
- [Suspensions & Debarments](#)
- [Waste, Fraud, Abuse Task Force](#)

Search Tips

Submit a Question

- [Contact Us](#)
- [Whistleblower Hotline - Repo](#)
- [Waste, Fraud, Abuse](#)

- [Site Map](#)
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soon of our regrets in this regard.

- Special note: If you filed a 1998 application but have not had ANY response from SLD through this final Wave 10, watch the Web Site for instructions on how to proceed with an inquiry about your application.

Congratulations to the tens of thousands of trailblazing schools, libraries, and consortia who are now celebrating their well-deserved Year One E-rate successes. We know you will inspire your colleagues who have not yet been reached by the E-rate, and we look forward to serving both veterans and newcomers in Year Two. But both must act quickly: the deadline for all Year Two applications is fast approaching. We strongly recommend that you file your Form 470 so that it is posted on the SLD Web Site no later than March 5, 1999. Keep the E-rate flowing for your school or library - file Form 470 today!

**New Search Function! Service Provider
Information by SPIN (2/24/1999)**

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The SLD has added a new search function to the Provider Area. This "Service Provider Information by SPIN" search provides service providers with important information regarding the "post-commitment" phase of the funding process, including:

- Status of the certification of service provider's SPIN
- Percentage of FRNs for which this company received a FCDL per Wave
- Dates Form 486 Notification letters sent to service provider's SPIN
- Dates BEAR (Billed Entity Applicant Reimbursement) letters sent to service provider's SPIN

**Wave 9 Recipients of E-rate Funding
(2/20/1999)**

[Top of Page](#)

Click here to download state reports on the Funding Commitment Decisions in Wave Nine, the largest wave of letters released to date. This Wave consists of approximately 3700 funding commitment decisions letters totaling \$323 million in E-rate funds. The Wave Nine release pushes the total dollars committed to over \$1.4 billion, covers 94% of applicants who filed within the E-rate application window, and, for the first time, extends funding to cover internal connections requests for applicants who qualify for a discount level as low as 70%.

Form 471 Minimum Processing Standards

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Form 472 Minimum Processing Standards [Top of Page](#)
(2/20/1999)

Minimum Processing Standards are the procedures that the SLD uses to review your application when we first receive it. Your application must pass the Minimum Processing Standards in order for us to begin entering your application into our data system. [Click here for Minimum Processing Standards.](#)

10 BEAR Form Tips (2/12/1999)[Top of Page](#)

If you are among the thousands of E-rate applicants receiving a funding commitment decisions letter in Wave 8 (in the mail now) or Wave 9 (scheduled for next week), you may be preparing to file a Billed Entity Applicant Reimbursement (BEAR) Form for the first time. Officially known as FCC Form 472, the BEAR Form is the tool you use to request reimbursement for E-rate discounts on approved services you've already paid for. The BEAR Form comes with your funding commitment letter; it's also available on the Schools and Libraries Division Web Site (www.sl.universalservice.org) as a downloadable PDF file and as a type-in/print out form.

[Click here to read some reminders about how the BEAR process works-and some tips to make it work well for you.](#)

Fact Sheet on Library Consortia (2/10/1999)[Top of Page](#)

The Form 470 Guidance Section in the Reference Area now features a Fact Sheet on Library Consortia.

New!! Type-In / Print-Out Your Form 486
(2/5/1999)[Top of Page](#)

The SLD has created a new application tool: a version of the Form 486 that you can download from this Web Site, fill in on your computer, print out, and mail to us. This Form 486 is virtually identical to the PDF (Portable Document Format) file that has been available on our Web Site, but now you can enter information directly into the form rather than just printing out a blank hard copy and then filling out the form by hand.

Type-In/Print Out Form 486

Please note: This form does **NOT** electronically transmit data to the SLD, but instead makes your completion of the paper form easier and neater.

You must have Adobe's free Acrobat Reader 3.01 installed on your computer in order to access the Form 486. [Click here for information on obtaining this software, as well as specific instructions for downloading the Form 486 from this Web](#)

having to worry about rushing your Form 471 application and attachments into overnight mail on Monday, April 5.

For help filing your Form 470 in a timely fashion, please see "Top 10 Reasons You Should File Your Year 2 E-Rate Application NOW" (at www.sl.universalservice.org or via fax-on-demand, 800-959-0733, document #206) and the forthcoming "Quick Tips for Filing Your Form 470 - Even If You Don't Have a 1998 Funding Letter Yet."

Wave 7 Recipients of E-rate Funding
(2/3/1999)

[Top of Page](#)

Click here to download state reports on the Funding Commitment Decisions in Wave Seven. This Wave consists of 1,500 funding commitment decisions letters totaling \$140 million in E-rate funds. The average commitment in this wave is over \$93,300 per applicant.

More Waves to Come! (2/3/1999)

[Top of Page](#)

With the Wave 7 commitments plus the number of applicants notified that their requests could not be funded (due to ineligible services or internal connections below the discount threshold), SLD has responded to more than two-thirds of its 1998 in-the-window applicants. Approximately \$760 million has been committed through Wave Seven, or about 40% of the available funding.

Wave Seven is NOT the last wave of E-rate funding commitments for the year. It will be followed by two to four additional waves before the process is concluded. While we had hoped to make the vast majority of commitments by the end of January, and worked diligently to do so, we are also committed to providing detailed review of each application for compliance with program rules, as we agreed to do in the course of our audits by both the General Accounting Office and PricewaterhouseCoopers. We are completing our final review of each application as quickly as we can without sacrificing assurance of program integrity, and have continued to add staff resources to expedite the overall review process.

Please watch the SLD Web Site (www.sl.universalservice.org) and our Newsflash distribution for more information about the schedule of upcoming funding commitments. We are also encouraging all current and potential E-rate applicants to get their 1999-2000 Form 470 in as soon as possible to begin the E-rate process for Year 2.

Need help? You can contact us toll free at 1-888-203-8100.
Our hours of operation are 8AM to 8PM, Eastern Time, Monday through Friday.
Aware of fraud, waste, and abuse, report it to our Whistleblower Hotline!

INVOICE

SPECTRUM COMMUNICATIONS

Cabling Services, Inc.
226 N. Lincoln Avenue
Corona, CA 92882-1893
(909) 371-0549

INVOICE NO. 5182003

INVOICE DATE: 12/02/2003

SIR NO. 0000639

Sold To:

Riverside Co. Office of Education
Attn. Tony Johnson
3939 Thirteenth Street
Riverside, CA 92502

Ship To:

Purchase Order No.	CSR #	Ship/Install Date	Via/Type	Terms
N/A	N/A	1999-2000	Bid	NET 30
Quantity	Description			Amount
	<p>Persuant to USAC's October 3, 2003 request for recovery of erroneously disbursed E-Rate funds related to equipment trade-in values for E Rate funding year 1999-2000, we are submitting the enclosed invoice to RCOE for the non-discounted services USAC has alleged are unpaid.</p> <p>See attachment for detail.</p>			
<p>Equipment title transfer upon receipt of full payment.</p> <p><i>All Invoices that are past due are subject to finance charges at the rate of 1.5% per month.</i></p> <p>Federal Tax Identification No. 33-0662939</p> <p>California State Contractors License No. 713766 (C-7 Low Voltage)</p> <p>Oregon State Contractors License No. 93577 (Specialty Contractor)</p> <p>Small Business Administration Certifications No. 0006245</p> <p>Spectrum Communications is an "EQUAL OPPORTUNITY EMPLOYER"</p>		<p>Parts</p> <p>Labor</p> <p>Total</p> <p>Tax</p> <p>Freight</p> <p>Discount</p> <p>Balance Due</p>		<p>RCOE Exhibit G Page 52 of 76</p> <p>\$348,480.97</p>

Appendix III

Analysis of Trade In received by Spectrum

Riverside County (BEN 143743)

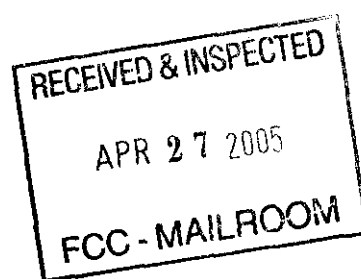
BEN 143743, Form 471 #148309

RN#	Amount Paid	Amount Approved	School	Discount	Non-Discounted		5000	Other	Trade-In Value	Paid in Cash	July Valuation		Refund Due	Customer Match Required
					Portion						Total Payments by Applicant	Maximum Commitment Amount		
299371	\$190,018.55	\$190,018.55	Alvord	67	\$93,591.23		2	27	\$ 73,871.92		\$ 73,871.92	\$ 149,982.39	\$ 40,036.16	19,719.30
299376	\$103,272.47	\$103,272.47	Banning	67	\$50,865.54		1	15	\$ 38,966.30		\$ 38,966.30	\$ 79,113.39	\$ 24,159.08	11,899.25
299375	\$92,254.87	\$92,254.87	Beaumont	67	\$45,438.97				\$ -	\$ 45,438.69	\$ 45,438.69	\$ 92,254.31	\$ 0.56	0.28
299374	\$174,886.16	\$174,886.16	Coachella	67	\$66,137.96				\$ -	\$ 66,137.92	\$ 66,137.92	\$ 174,886.08	\$ 0.08	0.04
299356	\$335,966.71	\$335,966.71	Corona Norco	67	\$165,476.14		4	46	\$ 136,915.37		\$ 136,915.37	\$ 277,979.70	\$ 57,987.01	28,560.77
299369	\$16,526.39	\$16,526.39	Desert Center	67	\$8,139.86				\$ -	\$ 8,139.87	\$ 8,139.87	\$ 16,526.40	\$ -	0.00
299370	\$313,931.52	\$313,931.52	Desert Sands	67	\$154,622.99		4	42	\$ 131,501.14		\$ 131,501.14	\$ 266,987.16	\$ 46,944.36	23,121.85
299365	\$212,053.73	\$212,053.73	Hemet	67	\$104,444.37		2	31	\$ 79,286.16		\$ 79,286.16	\$ 160,974.92	\$ 51,078.81	25,158.22
299372	\$217,562.53	\$217,562.53	Jurupa	67	\$107,157.66		2	32	\$ 80,639.72		\$ 80,639.72	\$ 163,723.06	\$ 53,839.47	26,517.95
299373	\$184,509.75	\$184,509.75	Lake Elsinore	67	\$90,877.94		2	26	\$ 72,518.36		\$ 72,518.36	\$ 147,234.25	\$ 37,275.50	18,359.57
299367	\$44,070.38	\$44,070.38	Menifee	67	\$21,706.31		0	8	\$ 10,828.47		\$ 10,828.47	\$ 21,985.08	\$ 22,085.30	10,877.84
299382	\$395,168.80	\$395,168.80	Moreno Valley	67	\$194,635.38		5	53	\$ 165,053.20		\$ 165,053.20	\$ 335,108.01	\$ 60,060.79	29,582.18
299381	\$125,307.65	\$125,307.65	Murietta	67	\$61,718.69		1	19	\$ 44,380.53		\$ 44,380.53	\$ 90,105.93	\$ 35,201.72	17,338.16
299354	\$33,052.78	\$33,052.78	Nuview	67	\$16,279.73				\$ -	\$ 16,279.73	\$ 16,279.73	\$ 33,052.79	\$ -	0.00
299355	\$173,492.15	\$173,492.15	Palm Springs	67	\$85,451.36		2	24	\$ 69,811.25		\$ 69,811.25	\$ 141,737.98	\$ 31,754.17	15,640.11
299363	\$86,746.08	\$86,746.08	Palo Verde	67	\$42,725.68		1	12	\$ 34,905.62		\$ 34,905.62	\$ 70,868.99	\$ 15,877.09	7,820.06
299378	\$44,070.38	\$44,070.38	Perris Elementary	67	\$21,706.31		0	8	\$ 10,828.47		\$ 10,828.47	\$ 21,985.08	\$ 22,085.30	10,877.84
299377	\$86,746.08	\$86,746.08	Perris High	67	\$42,725.68		1	12	\$ 34,905.62		\$ 34,905.62	\$ 70,868.99	\$ 15,877.09	7,820.06
299353	\$246,431.28	\$246,431.28	Riverside USD	67	\$121,376.60		5	26	\$ 128,507.11		\$ 128,507.11	\$ 260,908.38	\$ -	0.00
299368	\$38,561.58	\$38,561.58	Romoland	67	\$18,993.02		0	7	\$ 9,474.91		\$ 9,474.91	\$ 19,236.94	\$ 19,324.64	9,518.11
299359	\$75,728.49	\$75,728.49	San Jacinto	67	\$37,299.11		1	10	\$ 32,198.50		\$ 32,198.50	\$ 65,372.72	\$ 10,355.77	5,100.60
299379	\$179,000.95	\$179,000.95	Temecula	67	\$88,164.65		2	25	\$ 71,164.80		\$ 71,164.80	\$ 144,486.12	\$ 34,514.83	16,999.84
299361	\$312,606.76	\$312,606.76	Val Verde	67	\$153,970.49		1	53	\$ 90,401.53		\$ 90,401.53	\$ 183,542.51	\$ 129,064.25	63,568.96
		\$3,681,966.04			\$1,813,505.66		36	476	\$1,316,159.00	\$155,996.21	\$1,472,155.21	\$2,988,921.18	\$ 707,521.97	348,480.97

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DATE: April 27, 2005

TO:

NAME	FAX NO.	PHONE NO.
Bill Caton FCC Secretary's Office	202-418-0187	202-418-0304

FROM: Rina M. Gonzales

RE: Application for Review filing re File No. SLD-148309, CC Docket No. 02-6 (Email 4a(1) of 4)

FILE NO.:	USER NO.: 1207	NO. OF PAGES, INCLUDING COVER: 33
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Mr. Caton:

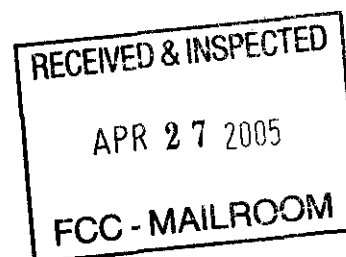
This is the last e-mail attachment which did not go through via my e-mail to CCBSecretary@fcc.gov. I blind carbon copied you on all the e-mails, I sent a total of 6 emails, but one did not go through. Can you please see that this portion of my client's Application for Review is routed to the appropriate individual at the FCC?

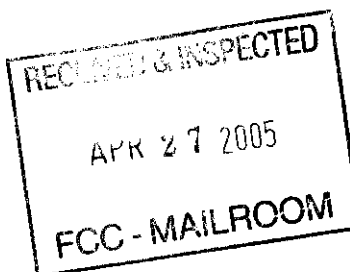
If you have any questions, please contact me directly at (951) 826-8332.

Thank you very much for your assistance in this matter.

Rina Gonzales, Esq.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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BEST BEST & KRIEGER

In the Matter of)

Request for Review of Decision of the)
Universal Service Administrator)

by)

Spectrum Communications Cabling)
Systems, Inc.)

CC Docket No. 02-6

FRN Nos. 299376, 299377, 299378,
299379, 299381, 299382, 299355,
299356, 299359, 299361, 299363,
299365, 299367, 2993368, 299370,
299371, 299372 and 299373

REQUEST FOR REVIEW

Pierre Pendergrass
General Counsel
Spectrum Communications Cable
Services, Inc.
226 North Lincoln Avenue
Corona, CA 92882
(909) 273-3114

August 30, 2004

RECEIVED & INSPECTED

APR 27 2005

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SUMMARY

In March 1999, R O P - Riverside County/ Riverside County Office of Education ("Riverside") contracted with Spectrum Communications Cabling Systems, Inc. ("Spectrum") for a variety of services offered through the universal service support mechanism for the schools and libraries ("E-rate Program"). Consistent with FCC and Program rules, Riverside traded in certain equipment and applied the fair market value of that equipment to the non-discounted portion of the services Riverside purchased from Spectrum. Spectrum, based upon its considerable expertise in the purchase and sale of new and used technology equipment, calculated the fair market value of Riverside's trade-in equipment as of March 1999, which served as consideration in the parties' contract. Spectrum's valuation of the equipment was later substantiated through an independent appraisal.

Four years after valuable E-rate services were funded by USAC and provided by Spectrum, the SLD and USAC now contest the E-rate funding granted to Riverside based upon the date of the fair market valuation for the traded-in equipment. Specifically, the SLD and USAC claim, based upon a new Program rule that was adopted years after E-rate services were rendered to Riverside, that the trade-in equipment should have been valued at the time the equipment changed hands or on the first date of the applicable E-rate funding year (July 1, 1999), not when the parties entered into their contract (March 1999).

Riverside and Spectrum complied with all applicable FCC and Program rules that were effective in 1999. At that time, there was little guidance available to E-rate participants regarding the timing of fair market valuations, or valuation methodologies, for trade-in equipment under the E-rate Program. The only policies then in effect required equipment to be

traded in at its fair market value and prohibited the trade-in of equipment that had been previously purchased using Program funds. Riverside and Spectrum complied with both of these requirements, which the SLD and USAC do not dispute.

The SLD and USAC exceeded their authority when they concluded that Riverside and Spectrum were precluded from establishing the fair market value of Riverside's equipment as of the date of contract formation. In 1999, when Spectrum and Riverside entered into their agreement, there was no FCC or Program guidance that addressed *when* the fair market value of traded-in equipment should be determined, and such formal guidance still does not exist today (except in the case of equipment that is valued using a 3-year depreciation analysis). Spectrum only became aware of a potentially new SLD Program rule in March 2003 when Mr. Falkowitz of the SLD contacted Spectrum about the trade-in value of Riverside's equipment. Falkowitz asserted that the FCC had provided the SLD with informal guidance regarding trade-in values which indicated that the fair market value of traded-in equipment could be calculated using the rebuttable presumption that equipment has a useful life of three years. This informal guidance did not direct the SLD to create a new Program rule regarding the timing of fair market valuations for traded-in equipment. It appears USAC has made a policy and created the equivalent of new guidelines regarding the timing of valuations for traded-in equipment in violation of its charter.

The SLD and USAC further exceeded their authority when they applied a new, later-adopted Program rule regarding the timing of fair market valuations for trade-in equipment to E-rate services that were provided years earlier, in 1999-2000. It is a basic tenet of American jurisprudence that new precedent is only applied prospectively. The Commission has long acknowledged this, concluding specifically in the context of the E-rate Program that new policies

and rules apply to applicants on a going-forward basis. It is unreasonable for Riverside and Spectrum, exercising good faith and complying with Program rules and general principles of contract law, to be penalized for acting reasonably under the circumstances in 1999, especially when there was no contrary FCC or Program guidance regarding the date upon which the fair market value of equipment should be established.

If the FCC concludes that E-rate funds in this case were erroneously disbursed, such monies should be recovered from Riverside because it would not have paid for the entire non-discounted portion of the E-rate services it obtained. The Commission has instructed USAC that beneficiaries of any FCC or Program violation should be liable for any reimbursement. The harm from rescinding the monies allocated to Riverside in this case, however, far outweigh any benefit. Accordingly, Spectrum, on behalf of Riverside, requests that the FCC waive any rule violation so that Riverside is not irreparably harmed in this case.

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

In the Matter of)	
)	
Request for Review of Decision of the	)	CC Docket No. 02-6
Universal Service Administrator)	
by	)	FRN Nos. 299376, 299377, 299378,
Spectrum Communications Cabling	)	299379, 299381, 299382, 299355,
Systems, Inc.	)	299356, 299359, 299361, 299363,
	)	299365, 299367, 2993368, 299370,
	)	299371, 299372 and 299373

REQUEST FOR REVIEW

Spectrum Communications Cabling Systems, Inc. ("Spectrum"), pursuant to Section 54.719(c) of the Commission's rules,¹ submits this Request for Review seeking reversal of a decision of the Administrator of the Universal Service Administrative Company ("Administrator" or "USAC" respectively), issued on July 1, 2004,² denying Spectrum's December 2, 2003 Letter of Appeal ("Appeal").³ Spectrum's Appeal sought reversal of a "Recovery of Erroneously Disbursed Funds" letter ("Recovery Letter") issued by USAC's Schools and Libraries Division ("SLD") on October 3, 2003, seeking to rescind more than \$700,000 in federal funding that was awarded to R O P - Riverside County/ Riverside County

¹ 47 C.F.R. § 54.719(c).

² Letter from the Universal Service Administrative Company to Pierre F. Pendergrass, General Counsel, Spectrum Communications Cabling Services, Inc. (July 1, 2004) ("*Administrator's Decision on Appeal*"), attached hereto as Exhibit 1.

³ Letter from Pierre F. Pendergrass, General Counsel, Spectrum Communications Cabling Services, Inc., to the Universal Service Administrative Company, Schools and Libraries Division (Dec. 2, 2003), attached hereto as Exhibit 2.

Office of Education ("Riverside") for products and services through the universal service support mechanism for schools and libraries ("E-rate Program").

The SLD specifically seeks to recover from Spectrum \$700,000 in E-rate funding that the SLD contends is related to the difference between the fair market value of Riverside's trade-in equipment as of March 1999, when Riverside and Spectrum formed their agreement for E-rate services, and the fair market value of Riverside's trade-in equipment as of July 1, 1999, the beginning of the 1999-2000 funding year. The SLD contends that Spectrum should have assessed the fair market value for the trade-in equipment as of July 1, 1999 based upon a Program rule that was adopted by the SLD roughly 3-4 years after the funding year in question. Spectrum and Riverside followed all FCC and Program Rules related to trade-in equipment that were applicable in 1999 (i.e., the equipment was traded for E-rate services at its fair market value, and the equipment was not previously purchased using E-rate funds). The fair market value assessed for Riverside's trade-in equipment in 1999 was confirmed by an independent appraisal performed in 2003. In the absence of specific FCC or USAC guidance in 1999 regarding the timing of determining the fair market value of trade-in equipment, the parties followed well established principles of contract law and valued the trade-in equipment, which was essential consideration for the E-rate services, at the time of contract formation.

The Commission should overturn USAC's decision and direct the SLD to withdraw the Recovery Letter because: (1) Spectrum and Riverside complied with all FCC and Program rules regarding trade-in equipment that were in effect in 1999; (2) the SLD and USAC exceeded their authority when they adopted a new policy that precludes calculating the fair market value of traded-in equipment at the time Program participants enter into a contract for services; and (3)

the SLD and USAC exceeded their authority by applying this new policy retroactively to Spectrum and Riverside.

I. SPECTRUM'S INTEREST IN THE MATTER PRESENTED FOR REVIEW.

Pursuant to Section 54.719 of the FCC's rules,⁴ any party aggrieved by an action taken by the SLD or the Administrator may appeal that decision, including service providers and applicants. Spectrum is an interested party in this case because it is the service provider to whom the SLD issued the Recovery Letter seeking to recoup more than \$700,000 in E-rate funding.

II. STATEMENT OF FACTS.

A. Riverside's Request for Funding and Resulting Agreement with Spectrum.

Spectrum, a privately held corporation founded in 1985, is a provider of information technology products and services. The company's customer base consists primarily of the education market, public sector agencies and large healthcare facilities. The company has participated in the E-rate Program since 1998, during which time Spectrum has acted as a service provider for approximately 38 different school districts.

Riverside is a service agency supporting Riverside County's 23 school districts and linking them with the California Department of Education. Riverside provides, among other services, assistance to its member districts in the deployment and maintenance of network and telecommunications services. Approximately 6.1 million students were enrolled in Riverside County in the 2002-2003 school year.

Riverside formed a consortium of its member school districts for the purpose of applying for E-rate Program discounts in the 1999-2000 funding year. On March 5, 1999, Riverside filed a Form 470 soliciting proposals from prospective service providers for a range of eligible E-rate

⁴ 47 C.F.R. § 54.719.

products and services. Consistent with Program rules, the Riverside consortium members intended to "trade-in" certain equipment owned by Riverside as consideration for Riverside's non-discounted portion of the E-rate services it was seeking through the Program.

Spectrum submitted a bid proposal in response to Riverside's Form 470 and Riverside subsequently selected Spectrum as the service provider for the consortium. In the absence of specific FCC or USAC guidance on the timing for determining the fair market value of the trade-in, Spectrum assessed the fair market value of the equipment as part of the initial "bid and ask" process at the time of contract formation.

Spectrum calculated the fair market value of Riverside's equipment, based upon its considerable expertise in the purchase and sale of new and used technology equipment in the Riverside market. Specifically, Spectrum: (i) had previously sold and installed the specific pieces of equipment at issue; (ii) was knowledgeable about the manner in which the equipment had been used and maintained; (iii) was knowledgeable about the training and expertise of the staff who had been using the equipment; and (iv) most importantly, had detailed knowledge about the identity and needs of potential buyers of the specific pieces of equipment in question. As discussed in further detail below, Spectrum's valuation of the equipment at the time the parties entered into their agreement in March of 1999 was subsequently substantiated by an independent third-party appraiser.⁵

On April 5, 1999, Riverside filed a Form 471 evincing its acceptance of Spectrum's proposal and its selection of Spectrum as its service provider for the 1999-2000 funding year.

⁵ See Appraisal Report for Spectrum Communications, DMC Consulting Group (Mar. 2003), attached to Memorandum from Robert Rivera, Spectrum, to Ed Falkowitz, Schools and Libraries Division (Mar. 15, 2003) ("Appraisal Report"), attached hereto as Exhibit 3. The appraiser, in fact, concluded that Spectrum's valuation in March 1999 was slightly *less* than the fair market value of the equipment at that time.